



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Doug Domenech
Secretary of Natural Resources

David K. Paylor
Director

**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY
FOR
FORMER LIBERTY CLEANERS DRY CLEANING FACILITY
EPA ID No. VAD023843899**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and the Norfolk Redevelopment and Housing Authority for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1401.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. “Generator” means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
6. “Hazardous Waste” means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
7. “LQG” means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).
8. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
9. “NRHA” means the Norfolk Redevelopment and Housing Authority, a redevelopment and housing authority created pursuant to the Housing Authorities Law, Va. Code § 36-4 *et seq.* NRHA is a “person” within the meaning of Va. Code § 10.1-1300.
12. “Order” means this document, also known as a “Consent Order” or “Order by Consent.”
13. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
14. “Regulations” or “VHWMR” means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
15. “Va. Code” means the Code of Virginia (1950), as amended.
16. “VAC” means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. NRHA owns a former dry cleaning facility (“Facility”) located at 620 East Liberty Street in Norfolk, Virginia.

2. NRHA acquired the Facility on August 19, 2009. The Facility had been abandoned by the former owner prior to NRHA's acquisition. According to NRHA, at the time of acquisition, the abandoned facility, which had been registered under EPA ID No. VAD023843899, contained large accumulations of debris, old containers, defunct equipment, and dry cleaning materials; the roof had been leaking severely over the container storage area, resulting in corrosion and damage to equipment, containers, and building contents; and NRHA, acquired the deteriorating property in order to correct this adverse condition, to enable removal of the damaged and deteriorating facility, and to facilitate redevelopment.
3. On July 8 and 27, 2010, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:
 - a. In January 2010, NRHA was a LQG, because it generated 6,905 pounds of hazardous waste in that calendar month. NRHA did not notify DEQ of being a LQG.
 - b. Hazardous waste consisting of dry cleaning related solvents, filters, filter cake, floor sweepings, dry cleaning unit still bottoms, decontamination water and assorted chemicals (Hazardous Waste Codes D001, D039, F002, U210, and U206) were stored at the Facility from January 18, 2010 to July 9, 2010 (172 days). NRHA did not have a permit to store hazardous waste at the Facility.
 - c. Three 85-gallon, twenty-nine 55-gallon, one 30-gallon, three 10-gallon, and two five-gallon containers labeled as 'hazardous waste' and one propane cylinder (Hazardous Waste Code D001) did not have accumulation start dates marked on the containers.
 - d. The dry cleaning process unit at the Facility contained hazardous waste from August 21, 2009 (date of acquisition) until it was removed from the equipment on July 8, 2010 (322 days).
4. 9 VAC 20-60-315(D) requires anyone who becomes a LQG to notify the Department in writing immediately of this change in status and document the change in the operating record.
5. 40 CFR 262.34(a) allows generators of hazardous waste to store hazardous waste for 90 days or less without a permit or without having interim status and requires the date upon which each period of accumulation begins be marked and visible for inspection on each container.

6. 40 CFR 261.4(c) allows storage of hazardous waste in process units 90 days or less before it becomes subject to regulation including 40 CFR 262.34(a) and 9 VAC 20-60-262.
7. On September 10, 2010, based on the July 8 and 27, 2010 inspections and follow-up information, the Department issued a Notice of Violation to NRHA for the violations described in paragraphs C(3) through C(6), above.
8. On September 20, 2010, Department staff met with representatives of NRHA to discuss the violations noted in the NOV.
9. Based on the inspections conducted on July 8 and 27, 2010 and the September 20, 2010 meeting, the Board concludes that NRHA has violated the Regulations, as described in paragraphs C(3) through C(6), above.
10. NRHA has submitted documentation that verifies that the violations in paragraphs C(3) through C(6), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 10.1-1455, the Board orders NRHA and NRHA agrees to pay a civil charge of \$9,656.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

NRHA shall include its Federal Employer Identification Number (FEIN) [] with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of NRHA for good cause shown by NRHA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order only, NRHA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. NRHA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. NRHA declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by NRHA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. NRHA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. NRHA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NRHA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the TRO Regional Director within 24 hours and in writing within three business days, of learning of any condition above, which NRHA intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and NRHA. Nevertheless, NRHA agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. NRHA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to NRHA.

Termination of this Order, or any obligation imposed in this order, shall not operate to relieve NRHA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by NRHA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of NRHA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind NRHA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of NRHA.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and

there are no representations, warranties, covenants, terms or conditions agreed upon between parties other than those expressed in this Order.

15. By its signature below, NRHA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 4 day of April, 2011.

Acting Maria R. Stoll
Regional Director
Department of Environmental Quality

The Norfolk Redevelopment and Housing Authority voluntarily agrees to the issuance of this Order.

By: *Shurl R. Montgomery*
Date: 2-18-11

Commonwealth of Virginia
City of Norfolk

The foregoing document was signed and acknowledged before me this 18th day of February, 2011, by Shurl R. Montgomery, Chief Executive Officer, on behalf of the Norfolk Redevelopment and Housing Authority.

Sheila W. Joyner
Notary Public

My commission expires: July 31, 2011

